



(Billing Code 5001-06)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 216**

**RIN 0750-AI56**

**Defense Federal Acquisition Regulation Supplement: Approval  
Threshold for Time-and-Materials and Labor-Hour Contracts (DFARS  
Case 2014-D020)**

**AGENCY:** Defense Acquisition Regulations System, Department of  
Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense  
Federal Acquisition Regulation Supplement (DFARS) to establish  
the level of approval required for a determination and findings  
for time-and-materials and labor-hour contracts, or portions of  
contracts, exceeding \$1 million.

**DATES:** Effective [Insert date of publication in the **FEDERAL  
REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Johnson,  
telephone 571-372-6176.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is issuing a final rule amending the DFARS to establish the level of approval required for a determination and findings (D&F) for time-and-materials and labor-hour contracts, or portions of contracts, exceeding \$1 million. The D&F must address why cost-plus-fixed-fee and other contract types are not appropriate. The approval requirements in this rule do not apply to contracts that support contingency or peacekeeping operations, or that provide humanitarian assistance, disaster relief, or recovery from conventional, nuclear, biological, chemical, or radiological attack.

## **II. Publication of this final rule for public comment is not required by statute**

"Publication of proposed regulations", 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it pertains to requirements for internal documentation within

DoD, specifically, determination and findings for use of the time-and-materials and labor-hour contract types. These requirements affect only the internal operating procedures of the Government. This final rule is not required to be published for public comment, because it has no effect beyond the internal operating procedures of DoD, and has no cost or administrative impact on contractors or offerors.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### **IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS

revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

## **V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### **List of Subjects in 48 CFR Part 216**

Government procurement.

**Amy G. Williams,**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 216 is amended as follows:

#### **PART 216—TYPES OF CONTRACTS**

1. The authority citation for 48 CFR part 216 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Section 216.601 is amended by revising paragraph (d) to read as follows:

#### **216.601 Time-and-materials contracts.**

(d) Limitations.

(i) (A) Approval of determination and findings for time-and-materials or labor-hour contracts.

(1) Base period plus any option periods is three years or less.

(i) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis exceeds \$1 million, the approval authority for the determination and findings shall be the senior contracting official within the contracting activity. This authority may not be delegated.

(ii) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis is less than or equal to \$1 million, the determination and findings shall be approved one level above the contracting officer.

(2) *Base period plus any option periods exceeds three years.* The authority of the head of the contracting activity to approve the determination and findings may not be delegated.

(3) *Exception.* The approval requirements in paragraphs (d) (i) (A) (1) and (2) of this section do not apply to contracts that—

(i) Support contingency or peacekeeping operations; or

(ii) Provide humanitarian assistance, disaster relief, or recovery from conventional, nuclear, biological, chemical, or radiological attack.

(B) Content of determination and findings. The determination and findings shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings shall—

(1) Include a description of the market research conducted;

(2) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

(3) Address why a cost-plus-fixed-fee term or other cost-reimbursement, incentive, or fixed-price contract or order is not appropriate; for contracts (including indefinite-delivery contracts) and orders for noncommercial items awarded to contractors with adequate accounting systems, a cost-plus-fixed-fee term contract type shall be preferred over a time-and-materials or labor-hour contract type;

(4) Establish that the requirement has been structured to minimize the use of time-and-materials and labor-hour requirements (e.g., limiting the value or length of the time-and-materials or labor-hour portion of the contract or order; establishing fixed prices for portions of the requirement); and

(5) Describe the actions planned to minimize the use of time-and-materials and labor-hour contracts on future acquisitions for the same requirements.

(C) Indefinite-delivery contracts. For indefinite-delivery contracts, the contracting officer shall structure contracts that authorize time-and-materials orders or labor-hour orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable.

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